



CEQA and Native American Cultural Sites

Native American Programs Committee Workshop

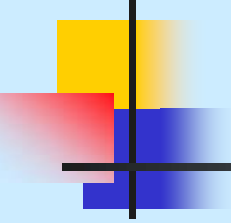
Society for California (SCA) Indian Values and Concerns
in CRM Policies and Practices

Society of California Archeology (SCA) 41st Annual
Meeting in

San Jose, March 24, 2007, Doubletree Hotel

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CEQA and Native American Cultural Sites Questions

- 1. How are Native American cultural sites currently addressed by CEQA?
- 2. What are the roles of the Native American Heritage Commission and the Office of Historic Preservation in CEQA review for Native American cultural resources?
- 3. How can we improve the CEQA Standards & Guidelines for consideration of Native American cultural resource values?



CEQA

A Brief Overview



CEQA

- Enacted in 1970, modeled after NEPA
- Law was conceived to require public agencies decision makers to **document & consider** the environmental implications of their actions
- Applies to **all** governmental agencies at **all** levels in California



CEQA Act

- Authority is codified in Statute §§ 21000-21177, California Public Resources Code
- CEQA Guidelines written by Office of Planning and Research (OPR) 14 Cal. Code Regs. § 15000 et. seq.; the last revision occurred in 1998.
- Biennial Review of Guidelines required by OPR; proposed changes to be recommended to Secretary of the Resources Agency § 21087



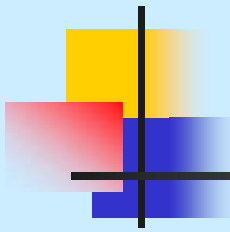
Purpose of CEQA

- **Protection of the Environment**
- Enacted to in response to the well-documented failure of state and local governments to consider fully the environmental implications of their actions
- CEQA is to be interpreted liberally “to afford the fullest possible protection of the environment within the reasonable scope of the statutory language” (Friends of Mammoth v. Board of Supervisors)

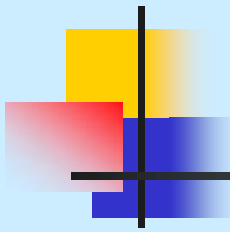


Four general principles

- 1. **Information** : Inform decision makers & public about significant environmental effects of proposed activities
- 2. **Identification**: Identify ways that environmental damage can be avoided or significantly reduced

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- **3.Prevention:** Prevent significant, avoidable damage to the environment by requiring changes in projects through use of alternatives or mitigation measures when the agency finds changes to be feasible
 - **4. Disclosure:** Disclose to the public the reasons why an agency approved the project in the manner the agency chose if significant environmental effects are involved (Code § 21001 (d); Guidelines §15002)

CEQA has a

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- **Substantive** Mandate, is not just procedural
 - Public agencies **must** deny approval of projects with significant environmental effects if “there are feasible alternatives or mitigations measures” that can substantially lessen or avoid those effects



CEQA applies to **Discretionary** projects

Project: any activity which may cause either a direct or indirect physical change in the environment



Question 1

How are Native American
cultural sites currently
addressed by CEQA?

Appendix G

Environmental Checklist Form Cultural Resources

Would the project:

- a) Cause a substantial adverse change in the significance of a historical resource as defined in § 15064.5?
- b) Cause a substantial adverse change in the significance of an archeological resource pursuant to § 15064.5
- d) Disturb any human remains, including those interred outside formal cemeteries?

CEQA's Definition of an Historical Resource:

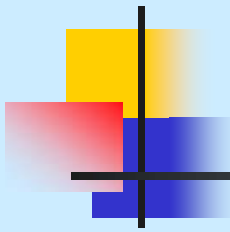
- In general : very broad, very inclusive
- Includes Archeological and Cultural Resources
- **Public Resources Code 21084.1 and CEQA Guidelines § 15064.5**





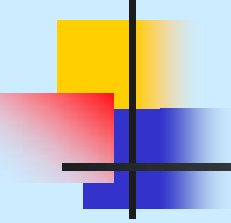
Historical Resources

- A. The State's declared policy is to "take all action necessary to provide the people of this State with . . . enjoyment of aesthetic, natural, scenic, and historic environment. . . ." (Code § 21001 (b))
- B. another legislative goal is to "preserve for future generations . . . examples of the major periods of California history."



Code § 21084.1 Historical Resources

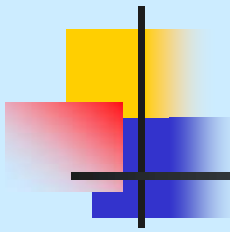
- A project that may cause a substantial change in the significance of an historical resource is a project that may have a significant effect on the environment. For purposes of this section, an historical resource is a resource listed in, or determined to be eligible for listing in, the California Register. Historical resources included in a local register of historical resources as defined in subdivision (k) of Section 5020.1, or deemed significant pursuant to criteria set forth

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- in subdivision (g) of Section 5024.1 are presumed to be historically or culturally significant for purposes of this section, unless the preponderance of the evidence demonstrates that the resource is not historically or culturally significant. The fact that a resource is not listed in, or determined to be eligible for listing in the California Register, not included in a local register, or not deemed significant pursuant to criteria set forth in subdivision (g) of Section 5024.1 shall not preclude a lead agency from determining whether the resource may be a historical resource for purposes of this section.



CEQA's defines Significant Effect

- Significant effect on the environment means a **substantial**, or potentially substantial, **adverse change** in any of the **physical** conditions within the area affected by the project including. . . objects of historic or aesthetic significance. (Public Resources Code 21068; CEQA Guidelines §15382)



CEQA defines **adverse change** as:

Physical Demolition, Destruction, Relocation, or Alteration of the resource or its immediate surroundings such that the significance of the historical resource would be materially impaired.



Commenting

- Comment on Notice of Preparations (NOP)
- § 21104 Lead Agency shall consult with certain agencies and may consult with person who has special expertise, i. e. [SB 18]
- § 21104 (c) substantive comments regarding those activities involved in a project that are within the area of expertise of the agency. Those comments should be supported by specific documentation.



Contents of CEQA Comments

Public is free to comment on any aspect of proposed project

However:

Comments should focus on sufficiency of document regarding identification of impacts and on methods to avoid or mitigate those impacts (§ 15204)



Effective Comments

- Focus your comments on substantive points
- “I don’t like the project”
- Explain the basis for your comments & support them with substantial evidence such as data, facts, expert opinion, references, etc.
- Focus on the “document” not the project
- Adequacy **yes!** of what is reasonable



Role of Experts

- Do you have to be an expert in order to comment?
- **NO.**

BUT!

- When bringing in someone to buttress your point, **an authority with recognizable credentials**, the Expert, should be substantiating your points



"Comments" vs. Advocacy

(News)Paper/Public Advocacy:
informs/engages/often will take sides

VS.

Comments on CEQA documents have to
address document its adequacy and
basic purpose of CEQA



Enforcement of CEQA

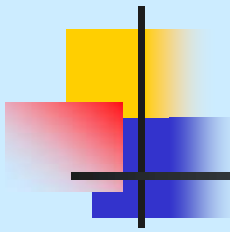
CEQA is a Self-executing
statute

What does that mean?



Self-Executing means

- Public agencies are entrusted with compliance of CEQA and its provisions are enforced, as necessary, **by the public** through **litigation** and the threat thereof.
- Who can/does sue: private citizens, organizations, and public agencies

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- The Resources Agency interprets CEQA Guidelines , but does not **review** the facts and exercise of discretion by public agencies in individual situations. It does not **enforce** CEQA, nor **review** for compliance with CEQA the many state and local agencies actions that are subject to CEQA.



Question 2

- What are the roles of the Native American Heritage Commission (NAHC) and Office of Historic Preservation (OHP) in review for Native American cultural resources?



Comments by an Agency

- A public agency is limited to comments on only those aspects of a project within their area of expertise or which are required to be carried out or approved by the agency
- Comments must be supported by substantial evidence (§15204(f), 15209)



OHP's Role

- Is the State's recognized authority on Preservation and Historical and Cultural Resources
- By definition a Commenting Agency under CEQA
- OHP receives in excess of 14,000 CEQA documents annually from SHC
- OHP comments under PRC 5024 & PRC 5024.5 on State Projects
- OHP comments on Local Government projects: City, County, Special Districts



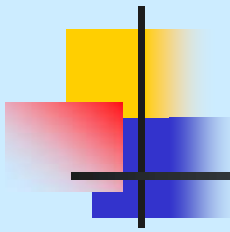
OHP

- Commenting Criteria
- Has no state mandate/authority; therefore only one paid position for CEQA review exists
- But: Since 12/2004 1/3 of OHP's comment letters have dealt with archeological/cultural resource issues



NAHC's Role

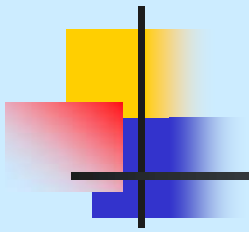
- Was created in 1976 to act as liaison in disseminating and interpreting laws, rules and procedures affecting the large number of federally recognized tribes and other tribal groups
- Is to identify the most likely descendants in determining the treatment and disposition of Native American human remains
- Comments under PRC § 5097.98

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- Manages the Sacred Lands File
 - Administers the application of PRC § 5097.9 et. al and the Health and Safety Code §7050.5
 - <http://www.ceres.ca.gov/nahc>



Question 3

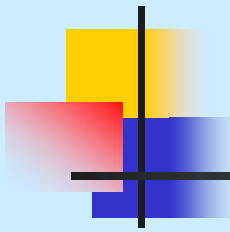
- How can we improve the CEQA Standards & Guidelines for consideration of Native American cultural resource values?

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- Through the environmental review process which has also become a means by which the public interacts with the decisions makers in developing policies affecting the environment.



1. Implementation

- Implement CEQA by following its **process:**
- Develop awareness of projects in your neighborhoods
- Mailing lists for local jurisdictions, Planning Departments
- Participate in Public Hearings

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- **Comment** on the various projects/documents:
 - Exempt Projects, NOPs, EIRs or MND
 - Comment letters need to be part of administrative record
 - Exhaust the administrative remedies
 - Litigation last step of process



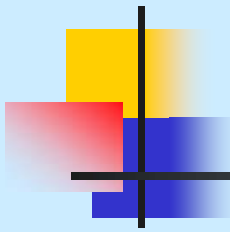
2. Litigation

- Generally enforces CEQA
- Results in Superior Court Cases with court-ordered remedies to CEQA violations
- **OR** leads to Court of Appeal or Supreme Court cases creating precedent !! (ca. 12-15 of those deal with CEQA & Historical Resources to date)



3. Amendments/Revisions to CEQA Statute & Guidelines

Requires New Legislation



Concepts that could be Broadened

- Cultural Resources Definition
- Definition of the Environment to be inclusive of Native American Values
- The concept of Consultation – i. e. integration of SB 18 into the Guidelines



General CEQA Resources:

- CEQA and CEQA Guidelines printed copies:
- CELSOC (Consulting Engineers and Land Surveyors of California)
- 1303 J Street, Suite 450
- Sacramento, CA 95814
- 916-441-7991
- staff@celsoc.org
- Published annually-\$30.00 per copy plus tax and shipping for non-members



Web Based References:

http://ceres.ca.gov/topic/env_law/ceqa/

Law, guidelines, CEQA case law, proposed rulemaking

www.ceqanet.ca.gov/

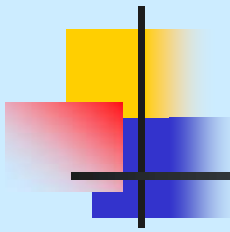
CEQA database, history, and publications

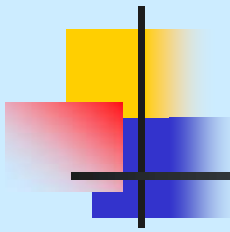
<http://ceres.ca.gov/ceqa/guidelines>

CEQA Guidelines

www.ohp.parks.ca.gov

CEQA and historical resources and other historic preservation topics

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- California Environmental Quality Act-
Public Resource Code by section
referencing historical or archaeological
resources:
 - 21083.2- Archaeological resources
 - 21084.1- Historical resources



CEQA Guidelines-California Code of Regulations Title 14, Chapter
by section referencing historical or archaeological resources:

15064.5

Determining the significance of impacts on historical and
unique archeological resources

15126.4(b)

Consideration and discussion of mitigation measures proposed
to minimize significant effects-historical resources

15300.2(f)

Exceptions to categorical exemptions-historical resources



15316

Transfer of ownership of land in order to create parks

15325

Transfer of ownership of interest in land to preserve existing natural conditions

15331

Categorical Exemptions -Historical Resources restoration/rehabilitation

15360

Definitions-Environment



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